

Internal Revenue Service

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Department of the Treasury

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

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PLR-122958-13

Date: NOVEMBER 8, 2013

In Re:

LEGEND:

Settlor =

A =

B =

C =

D =

Taxpayer =

Trust =

Date 1 =

Date 2 =

Date 3 =

Corporate Trustee =

Individual Trustee =

State =

State 1 =

State Statute 1 =

State Statute 2 =

State Statute 3 =

State Statute 4 =

Dear :

This responds to your authorized representative's letter of May 13, 2013, in which a ruling is requested on the gift tax consequences of your proposed disclaimer. The facts and representations are as follows.

Settlor executed Trust, an irrevocable trust, on Date 1, a date before January 1, 1977.

Under Article Second, paragraph (b) of the Trust instrument, the trustees may pay, in their sole and absolute discretion, such sums of income or accumulated income or principal to or for the benefit of A (Settlor's child) or any of A's descendants in the event of illness, accident, or other misfortune, or in the event of any emergency, or if in the judgment of the trustees, it is necessary for the comfortable maintenance, support or education of any such person. Trust will terminate 20 years after the death of the survivor of A, B, and C, and all the descendants of Settlor living on Date 1. On termination, the remaining Trust principal and undistributed income will be distributed to the descendants of A who have no living ancestor who is a descendant of A, per stirpes.

Under Article Seventh, the trust is to be construed in accordance with the laws of State. The current trustees of Trust are Corporate Trustee and Individual Trustee.

On the date that Trust was executed, Settlor had 11 descendants consisting of three children (A, B, and C) and 8 grandchildren, all of whom are still living. A's child, D, was born on Date 2, after the Trust instrument was executed. Taxpayer is D's child and A's grandchild. The trustees may, in their discretion, make distributions of income and principal during the trust term to Taxpayer, as A's descendant. Taxpayer will be entitled to receive a share of the per stirpital portion of the Trust remainder if D predeceases Taxpayer prior to the termination of Trust.

Taxpayer resides in State 1. Taxpayer will attain the age of majority under the laws of State and State 1 on Date 3. She proposes to disclaim all of her rights in the distribution of the remainder at the termination of Trust. Taxpayer will execute the disclaimer within 9 months after attaining her majority. She requests a ruling that the execution and delivery of the proposed disclaimer will not constitute a transfer subject to Federal gift tax.

Under State Statute 1, any individual to whom property or an interest therein is donatively transferred by any means, including a transfer resulting from another disclaimer, may disclaim all or any portion of the transfer. Unless the terms of the transfer otherwise provide, the disclaimer shall cause the terms of the transfer to be applied to the disclaimed transfer and to any future interests taking effect thereafter as if the disclaimant had died immediately before the transfer.

State Statute 2 provides, in part, that a disclaimer is made by a writing showing an unconditional refusal to accept a transfer, or a portion thereof, signed by the disclaimant, or representative, and delivered on or before 9 months after the transfer, and before any acceptance of the disclaimed interest. Delivery of a disclaimer may be accomplished by delivery to the transferor, the transferor's legal representative, or the holder of legal title to the property to which the interest is related.

State Statute 3 provides that each separate interest in property is subject to disclaimer or acceptance and each separate interest, including any specific amount, part, fraction

or asset thereof, or formula amount based on present or future facts independent of the disclaimant's volition, is subject to disclaimer or acceptance.

State Statute 4 provides that a contingent future interest may be disclaimed in whole or in part at any time before, or within 9 months after, beneficiaries of the interest have been fully ascertained and their interests vested.

Section 2501(a) of the Internal Revenue Code imposes a tax on the transfer of property by gift. Section 2511(a) provides that the gift tax imposed under § 2501 applies whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

Section 25.2511-1(c)(2) of the Gift Tax Regulations provides that, in the case of transfers creating an interest in the beneficiary disclaiming made before January 1, 1977, where the law governing the administration of the decedent's estate gives the beneficiary a right completely and unqualifiedly to refuse to accept ownership of property transferred from a decedent, a refusal to accept ownership does not constitute the making of a gift if the refusal: (1) is made within a reasonable time after knowledge of the existence of the transfer; (2) is unequivocal; (3) is effective under local law; and (4) is made before the disclaimant has accepted the property.

As noted above, under § 25.2511-1(c), if the interest to be disclaimed was created before January 1, 1977, the disclaimant must disclaim the interest in the property within a reasonable time after knowledge of the existence of the transfer creating the interest to be disclaimed. In the case of a disclaimer of an interest in trust, in general, the transfer occurs when the trust is established rather than when the interest actually vests in the disclaimant, if the transferor has not reserved any power over the trust. See Jewett v. Commissioner, 455 U.S. 305 (1982). However, the time limitation for making the disclaimer does not begin to run until the disclaimant has attained the age of majority and is no longer under a legal disability to disclaim. See Id. at 318.

In this case, Taxpayer proposes to disclaim her contingent right to receive trust corpus on the termination of Trust. She will execute the disclaimer within 9 months after reaching age 18. Under these circumstances, the proposed disclaimer will be considered to be made within the time prescribed in § 25.2511-1(c).

Under § 25.2511-1(c)(2), the disclaimer must be unequivocal. Rev. Rul. 76-156, 1976-1 C.B. 292, which considers the application of § 25.2511-1(c), concludes that a disclaimer is unequivocal if the disclaimant's act of refusal is unambiguous in its consequences; that is, the disclaimant must unqualifiedly refuse to accept ownership of the property. For example, a disclaimer is unequivocal if the disclaimed property must pass as provided in the instrument, and not pursuant to the direction of the disclaimant. Similarly, a disclaimer is unequivocal if the disclaimant does not accept the benefits from the property interest disclaimed. In this case, the disclaimed interest will not pass pursuant to any direction on

the part of Taxpayer. Further, Taxpayer will not accept the benefits of the disclaimed interest after the disclaimer.

Under § 25.2511-1(c)(2), the disclaimer must be effective under local law. In this case, State law specifically provides that an individual may make a valid disclaimer of any separate interest in property while retaining other separate interests in the same property. Further, the disclaimer will be timely under State law. Consequently, if Taxpayer satisfies the procedural requirements prescribed by State law, the disclaimer will be valid under local law. Finally, under § 25.2511-1(c), the disclaimant must not have accepted the property before the disclaimer.

Based on the facts submitted and the representations made, we conclude that if the disclaimer is executed as proposed, and assuming that Taxpayer has not accepted or received any of the benefits of the disclaimed interest (the terminating distribution), the disclaimer will not constitute a transfer subject to the Federal gift tax.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination. Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your representative.

Sincerely yours,

Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure
Copy for 6110 purposes